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December 28, 2012

VIA MESSENGER

Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 6687

Dear Mr. Jordan:

We write as counsel to Obama for America (the "Committee") and Martin Nesbitt, Treasurer, (collectively, "Respondents") in response to the complaint filed by Joseph Farah and WorldNetDaily, Inc. on November 1, 2012 (the "Complaint"). The Complaint incorrectly alleges that Respondents violated the Federal Election Campaign Act of 1971, as amended (the "Act") by knowingly accepting prohibited contributions from foreign nationals. They have not. Respondents acted in full compliance with the requirements of the Federal Election Commission (the "Commission") regarding the acceptance of contributions at all times.

Moreover, the Complaint presents no evidence to suggest that Respondents knowingly solicited, accepted, or received such prohibited contributions. The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act. *See* 11 C.F.R. § 111.4(d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. *See* Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001).

This Complaint presents allegations similar to those made against the Committee regarding the 2008 election. *See* MURs 6078/6090/6108/6139/6142/6214. The Commission properly dismissed those allegations, finding that the Committee's comprehensive vetting and compliance procedures were sufficient and effective in ensuring that the Committee did not knowingly

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solicit, accept or receive contributions from foreign nationals. The Committee utilized the same and enhanced procedures during the time period at issue here. Just as it did with the allegations from 2008, the Commission should accordingly find no reason to believe that Respondents violated the Act, and should dismiss this matter immediately.

I. Comprehensive Vetting and Compliance Procedures of the Committee

Obama for America is the principal campaign committee of President Barack Obama. The volume of contributions the Committee raised, both online and through more traditional fundraising means, is unprecedented for a political campaign. To process them all, the Committee developed a remarkably complex and nimble vetting and compliance system. This system built upon the system the Committee utilized in 2008, and included enhancements to reflect both technological advances and the Committee's fundraising experience. As was the case in 2008, the system not only met, but exceeded, the procedural requirements the Act and Commission regulations impose on the collection and processing of contributions. *See* FEC Factual and Legal Analysis, MURs 6078/6090/6108/6139/6142/6214 at 14-15 (Sept. 7, 2010).

More specifically, the Committee implemented comprehensive vetting and compliance procedures to protect against the knowing solicitation, acceptance, or receipt of prohibited contributions from any source, including foreign nationals. Pursuant to these procedures, and consistent with the Commission's regulations, Committee staff and outside vendors were tasked with examining all contributions to the Committee once they were received – whether online, through direct mail, in person, or otherwise – for "evidence of illegality." *See* 11 C.F.R. § 103.3(b).

The Committee developed and implemented these additional procedures in the expectation that it would raise a significant percentage of its contributions online, and in order to effectively address the security concerns inherent in online fundraising. The Commission specifically permits the acceptance of contributions online, and has chosen not to "mandate[] a specific set of safeguards for all campaigns that accept contributions over the Internet." FEC Advis. Op. 2007-30 (Dodd for President), *citing* Explanation and Justification for Matching Credit Card and Debit Card Contributions in Presidential Campaigns, 64 Fed. Reg. 32,394, 32,395 (June 17, 1999). Recognizing the difficulty of regulating in an area of "rapidly evolving technologies," the Commission has instead chosen to rely on a variety of measures approved in advisory opinions that "provide a level of security sufficient to allay concerns over the receipt of prohibited contributions." *Id.*; *see also* FEC Advis. Op. 1999-09 (Bradley for President).

The Committee's vetting and compliance procedures were entirely consistent with those recommended and approved by the Commission. First, the Committee's online fundraising landing page required that any donor affirm that the funds being contributed were lawful and consistent with the Act's requirements when clicking the "donate" button to make a contribution.

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See FEC Advis. Op. 2011-13 (DSCC). This included an affirmation that the donor was a United States citizen or a lawfully admitted permanent resident of the United States.

Second, again consistent with the Act and Commission regulations, all donors were required to enter their full names, addresses, occupations and employers. See 11 C.F.R. §§ 100.12; 104.39(a)(4). If the donor did not provide any of the required information, the Committee's website prompted the donor to provide the required information before making the contribution.

The Committee similarly took specific and significant steps to protect against the knowing solicitation, acceptance, or receipt of any contributions from foreign nationals. See 11 C.F.R. § 110.20(g). As described above, all donors who contributed online were required to affirm that they were either a United States citizen or a lawfully admitted permanent resident of the United States. A separate webpage was created for donors living abroad, which required them to enter a valid U.S. passport number before making a contribution. The Committee then followed up with any donor that provided a foreign address to request a copy of their U.S. passports and engaged in a careful screening process to vet and examine each donor to confirm the validity of the contribution.

Individuals who made contributions in person at events held outside the United States were separately required to provide a copy of a valid U.S. passport and submit a contribution form confirming they are a United States citizen or a lawfully admitted permanent resident of the United States. Whether the contribution was made online or in person, the Committee promptly refunded the contribution of any donor living abroad who did not provide a copy of a valid U.S. passport. Similar documentation was required for donors who were lawfully admitted permanent residents of the U.S.

Any political campaign that raises money online must necessarily rely in the first instance on information the donors provide. Inevitably, there will be donors who, either fraudulently or just for misguided fun, enter inaccurate information, through no fault of the recipient committee. As long as the recipient committee adequately examines each contribution for any evidence of illegality, the law cannot, and does not, penalize it for accepting the money, unless and until it discovers that the contribution was made illegally or fraudulently. See *id.* § 110.20(a)(4). Nevertheless, the Committee took steps well beyond what the law requires to root out such contributions and refund them.

The Committee's compliance and vetting procedures included an extensive back-end process to enable it to identify and refund any fraudulent or otherwise unlawful contributions. Throughout the campaign, the Committee continuously adjusted its compliance and vetting procedures to adapt to increases in the nature and volume of contributions. At regular intervals, the Committee conducted automated searches of its donor database – including all contributions, whether raised

online or not – to identify any fraudulent or unlawful donations. This included automated searches of its donor database to identify contributions with foreign city or country names, postal codes other than valid U.S. zip codes, non-U.S. email addresses, and passport numbers that did not conform to standard U.S. passport numbers. Additionally, the Committee screened all online credit card contributions that originated from a foreign IP address, and if any question arose regarding the donor's citizenship, the Committee required that the donor provide a copy of a valid U.S. passport. Again, any contribution for which a valid U.S. passport could not be confirmed was promptly refunded by the Committee.

These procedures provided a level of security more than sufficient to meet the Committee's legal obligations.

II. Resolution of the Contributions Cited in the Complaint

The Complaint incorrectly alleges that the Committee accepted nine specific contributions that were from foreign nationals. In fact, in some of these cases, the contributions were rejected by the Committee before they were even completely processed. In the remaining cases, the Committee promptly refunded the contribution at issue in a manner consistent with the Commission's regulations. The table attached as Exhibit A summarizes the resolution of each contribution identified in the Complaint. *See* Exhibit A.

Ultimately, the Complaint does not present any evidence that the Committee ever knowingly solicited, accepted, or received contributions from any of the identified – or any other – prohibited contributors. *See* 11 C.F.R. § 110.20(g). There is no indication in the Complaint or elsewhere that the Committee had "actual knowledge" that the source of any funds solicited, accepted, or received was a foreign national. *Id.* § 110.20(a)(4)(i). Nor was the Committee "aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted, or received" was a foreign national in most cases. *Id.* § 110.20(a)(4)(ii). Where the Committee was aware of facts that would lead a reasonable person to inquire as to the source and permissibility of the funds, the Committee conducted prompt and reasonable inquiries. *See id.* § 110.20(a)(4)(iii). In the case of each of the contributions identified in the Complaint, the Committee's procedures and inquiries, regardless of whether they were required to be conducted under the Act or Commission regulations, led to either a rejection of the contribution or a refund of the contribution at issue.¹

¹ In the case of three of the identified contributions, the refunds were triggered by an email from the contributor, Mike McNally, alerting the Committee to the fact that he had contributed under false pretenses and that he was, in fact, not a U.S. citizen. The contributions were immediately refunded. However, the Committee had already identified these contributions as requiring further inquiry, and had attempted to contact Mr. McNally to confirm his citizenship and the validity of the contributions. *See* Exhibit B. The Committee's vetting and compliance procedures had not run their course when Mr. McNally contacted the Committee.

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The alleged prohibited contribution from Boris Noridnikova, which was rejected by the Committee, a fact which the news article the Complaint cites to acknowledge, is an illustrative example of the Committee's compliance. See Complaint at Attachment 5. The contribution was made using an individual's fraudulent information, included a Russian address and email address, and did not include a valid U.S. passport number. Rather than providing support for the incorrect assertion that the Committee accepted a prohibited contribution, the rejection of this contribution demonstrates that the Committee's procedures described above were effective; the fraudulent contribution was identified and rejected by the Committee on the same day it was made.

As described above, the comprehensive measures taken by the Committee included:

- Safeguards on its website to prevent the acceptance of contributions from online donors entering false or fraudulent data.
- A requirement that donors living abroad enter U.S. passport numbers when giving online and subsequently provide copies of their passports to the Committee.
- Additional measures to confirm the legitimacy of each contribution once the donor relinquished control of it, utilizing comprehensive vetting and compliance procedures and promptly refunding any contributions found to be from a foreign national or other impermissible source.

The system yielded results: with respect to each specific contribution cited in the Complaint, the Committee either rejected or has refunded the contribution in compliance with the Act and Commission regulations.

For the foregoing reasons, Respondents respectfully request that the Commission find no reason to believe that they have violated the Act, and dismiss this matter immediately.

Very truly yours,



Robert F. Bauer
Graham M. Wilson
Counsel to Respondents

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